

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division

GREGORY CONTE AND WARREN
BALOGH,

Plaintiff,

v.

Case No. 3:20-cv-00038

COMMONWEALTH OF VIRGINIA, et al.

Defendants.

DEFENDANTS' STATUS REPORT

The Commonwealth of Virginia, Virginia State Police, Terence R. McAuliffe, Brian Joseph Moran, Steven Flaherty, Becky Crannis-Curl, Al Thomas, Wes Bellamy, the City of Charlottesville, and the Charlottesville Police Department (collectively "Defendants"), by counsel, pursuant to this Court's March 17, 2021 Order (ECF Doc. 61), provide the following status report.

1. Plaintiffs Gregory Conte and Warren Balogh filed their Complaint in the United States District Court for the Eastern District of Virginia, Richmond Division on August 12, 2019. (ECF Doc 1.) The Complaint arises out of the August 12, 2017 Unite the Right Rally in Charlottesville, Virginia.

2. Defendants filed Motions to Dismiss Pursuant to Rule 12(b)(3), or in the Alternative, Transfer Venue pursuant to 28 U.S.C. § 1404(a), as well as Motions Dismiss pursuant to Rule 12(b)(6). (ECF Docs. 8-11, 14-19, 21-24, 26-29.)

3. The case was transferred from the Eastern District, Richmond Division, to this Court by Memorandum Opinion and Order dated July 9, 2020. (ECF Docs. 48-49.)

4. On March 17, 2021, this Court entered an Order staying the case pending the Fourth Circuit's decision in the case of *Kessler v. City of Charlottesville*, No. 20-1704. (ECF Doc. 61.) That Order directed the parties to submit a status report within 15 days of the Fourth Circuit issuing a mandate in *Kessler*. (*Id.* at 2.)

5. On December 29, 2022, the Fourth Circuit, via an unpublished *per curiam* opinion, affirmed this Court's decision to grant the defendants' Motions to Dismiss in *Kessler v. City of Charlottesville*, No. 3:19-cv-00044-NKM-JCH (W.D. Va. Feb. 21, 2020). *Kessler v. City of Charlottesville*, No 20-1704, 2022 WL 17985704 (4th Cir. Dec. 29, 2022). The Fourth Circuit issued its mandate on January 20, 2023.

6. Given the Fourth Circuit's affirmance of this Court's prior decision in *Kessler*, and the similarity between the allegations in this case and *Kessler*, no further briefing is necessary on Defendants' Motions to Dismiss.

7. Defendants are of the position that their Motions to Dismiss, (ECF Docs. 10, 16, 23, 28), are ripe for decision and can be decided on the pleadings already submitted to this Court.

AL THOMAS, JR.

By Counsel

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**CITY OF CHARLOTTESVILLE
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**COMMONWEALTH OF VIRGINIA,
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CERTIFICATE

I hereby certify that on the 24th day of January, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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I hereby certify that I have mailed by United States Postal Service the document to the following:

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